

**SEP 19 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEONARDO RIOS-CORELLIA,

Defendant - Appellant.

No. 05-50422

D.C. No. CR-04-01680-RSWL

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Ronald S.W. Lew, District Judge, Presiding

Submitted September 11, 2006<sup>\*\*</sup>

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Leonardo Rios-Corellia appeals from the 46-month sentence imposed after his guilty-plea conviction for being an illegal alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rios-Corellia's contentions regarding *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and the constitutionality of 8 U.S.C. § 1326(b), are foreclosed by this circuit's case law. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that this court continues to be bound by the Supreme Court's holding in *Almendarez-Torres*).

We conclude that, under plain error review, Rios-Corellia's condition of supervised release requiring him to submit to drug testing as directed by the probation officer should not be vacated, even if imposing the condition was an error under *United States v. Stephens*, 424 F.3d 876, 881-83 (9th Cir. 2005). *See United States v. Maciel-Vasquez*, No. 05-50524, 2006 WL 2356014, at \*1 (9th Cir. August 16, 2006).

Finally, Rios-Corellia's challenge to the district court's condition of supervised release requiring him to report to his probation officer within 72 hours of re-entry into the United States is foreclosed by this court's opinion in *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the reference to § 1326(b)(2). *See United States v.*

*Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

**AFFIRMED; REMANDED.**